

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9168 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No
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MADHUBEN WD/O SHANKARBHAI BHIKHABHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR BC DAVE for Petitioners

MR MA BUKHARI, A.G.P.for Respondent No. 1

MR AJAY R MEHTA for Respondent No. 2

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 10/03/98

ORAL JUDGEMENT

(Per : Balakrishnan,J.) :-

Rule. Mr. M.A.Bukhari, learned A.G.P. waives service of rule on behalf of respondent no.1. Mr. Ajay R.Mehta, waives service of rule on behalf of respondent no.2.

At the request of learned Counsel appearing for the parties, the petition is heard today.

The petitioners' land comprising survey no.784/1, admeasuring 2 Hectares, 35 Are & 50 sq.mts. of village Indranaj, Taluka :Khambhat, District : Kheda was acquired on temporary basis under section 35 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The initial acquisition was for the period of one year and it was extended and the period of three years expired on 24.9.1989. The property is still under the occupation of 2nd respondent- O.N.G.C. The grievance of the petitioners is that rent fixed for this land at Rs.125/- per Are annually is too low and it is to be enhanced. The petitioners contended that they have filed application under section 35(3) of the Act for reference to the District Court for enhancement of compensation. In the Special Civil Application, the petitioners pray for a writ of mandamus, direction or order, directing the 1st respondent to refer the matter to the District Court.

We heard the petitioners' Counsel, the learned A.G.P. and learned Counsel for O.N.G.C. Under section 35 of the Act, the maximum period of temporary acquisition can only be for a period of three years. It is submitted by the Counsel for the 2nd respondent O.N.G.C. that the petitioners agreed that the 2nd respondent can be in possession of the property and on that condition, the property is being retained by the 2nd respondent. Though the petitioners filed several applications for enhancement of compensation, no decision was taken either by the 1st respondent or the 2nd respondent. Some of the letters produced in Special Civil Application show that the correspondence was made between the 1st respondent and the 2nd respondent regarding quantum of compensation to be paid to the petitioners. The 2nd respondent has also not chosen to refer the matter to the District Court. The petitioners in their application have stated that the compensation fixed is low and it does not commensurate with the income derived by them while they were in possession of the property. It is submitted that agricultural operations were being carried out in the property and the petitioners were getting substantial income from this property.

Having regard to these facts and circumstances of the case and also taking into consideration the fact that the respondents had not granted any increase in the rent originally fixed in the year 1990, the matter requires to be referred to the District Court for fixing reasonable compensation. In the result, we direct the 2nd respondent to refer the question of payment of reasonable compensation to the petitioners for the period from 1993 to 1998. The 1st respondent is directed to refer the matter to the District Court, Kheda at Nadiad within a period of two months from the date of receipt of copy of this judgment. The Special Civil Application stands disposed of. Rule is made absolute to the extent indicated hereinabove.

patel